

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.173, 455B.105(11) and 455B.299, the Environmental Protection Commission hereby amends Chapter 90, “Scope of Title—Definitions—Forms,” Chapter 91, “Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund,” Chapter 92, “Clean Water State Revolving Fund,” and Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs,” Iowa Administrative Code.

The purpose of the amendments is to update the rules for the Clean Water State Revolving Fund to reflect new definitions and current program practices and to better define project eligibility and prioritization. The most extensive changes are to the Livestock Water Quality Facilities program. The goal of the amendments is to ensure that loan funds are targeted to water quality improvement.

The changes in Chapters 90 through 93 include the following:

**Chapter 90**

1. Update definitions of eligible projects to reflect new EPA Clean Watersheds Needs categories.
2. Add a definition of “sponsored projects” pursuant to Senate File 339, legislation passed in 2009 Iowa Acts that changed municipal finance law.
3. Remove financial terms. Financial functions are the responsibility of the Iowa Finance Authority.
4. Add a definition of “new AFO” for purposes of loan eligibility.

**Chapter 91**

1. Integrate point source and nonpoint source prioritization. Prioritization will be based on classification and designated use of receiving waters, relative impact of various project types, and project purpose.
2. Remove project readiness criteria that are covered by bypass procedures in Chapter 92 and remove compliance status criteria.
3. Allow nonpoint source projects to be funded on a first-come, first-funded concept until 90 percent of the set-aside is allocated.

**Chapter 92**

1. Clarify public notice procedures.
2. Remove disbursement schedules and the possibility of environmental impact statements from Intended Use Plan (IUP) components.
3. Remove financial analysis from criteria for fundable list. This is the Iowa Finance Authority’s responsibility and is done through the loan application, not the IUP application.
4. Remove restrictions on funding to projects that previously received construction grants.
5. Reference the Clean Water Act to clarify eligibility of land purchase.
6. Make language on sponsored projects consistent with 2009 Iowa Acts, Senate File 339.
7. Include all assurances stated in the EPA Operating Agreement as required by the Clean Water Act.
8. Delete specific procedures for minority business enterprise (MBE)/women’s business enterprise (WBE) and substitute a reference to new EPA disadvantaged business enterprise (DBE) rules.

**Chapter 93**

1. Onsite Wastewater Systems
  - Change onsite fund to set-aside. The state fund originally established is no longer used.
  - Remove financial underwriting criteria and other financial procedures. These are now covered in the Iowa Finance Authority’s 265—Chapter 26 and in participation agreements with lenders.
2. Livestock Water Quality Facilities
  - Change pass-through loan to linked deposit.
  - Delete location preference.
  - Give DNR the authority to deny applications based on enforcement actions.
  - Limit funding to avoid subsidization of expansions.
  - Refine list of eligible practices.

- Make certain equipment attachments eligible only when an open feedlot is replaced with a dry bedded confinement building and the equipment is integral to the new manure management system.
  - Change application procedure. Applications will be submitted to the Soil and Water Conservation Districts rather than to the Department.
  - Adopt Natural Resources Conservation Service technical standards where appropriate.
  - Allow DNR or its agent to place restrictive covenant on land where open lot pens were shut down.
  - Remove financial information.
3. Local Water Protection
- Delete location preference.
  - Adopt Natural Resources Conservation Service technical standards.
  - Limit overbuilding of practices.
4. General Nonpoint Source (GNS)
- Allow participation agreement as well as linked deposit.
  - Define eligibility according to EPA Clean Watershed Needs categories.
  - Change application procedure for GNS projects. Storm water and green infrastructure project applications will be submitted to the Soil and Water Conservation Districts, and other GNS project applications will be submitted to the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 18, 2009, as **ARC 8312B**. Public hearings were held December 10, 2009, and January 6, 2010. The written comment period closed January 11, 2010. As a result of the comments received, the following changes have been made to the amendments as published under Notice of Intended Action:

1. In paragraph 91.8(1)“e,” an additional project purpose category has been added as follows:

Project Purpose	Points
Protects or restores the physical, chemical, and biological integrity of water resources at a specific site	50

2. Item 10, which rescinded existing rule 567—91.9(455B) and adopted a new rule in lieu thereof to define the terms “traditional” and “nontraditional,” was not adopted.

3. In paragraph 93.5(1)“b,” language has been modified to reflect that concentrated animal feeding operations, as defined in federal law, are not eligible to receive assistance from the state revolving fund. Paragraph 93.5(1)“b” now reads as follows:

*“b. Applicant eligibility.* Assistance is limited to livestock producers operating animal feeding operations according to federal law. Concentrated animal feeding operations as defined in 40 CFR Section 122.23 are not eligible.”

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.105 and 455B.291 to 455B.298, and 2009 Iowa Acts, Senate Files 339 and 432.

These amendments shall become effective April 14, 2010.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 90 to 93] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8312B**, IAB 11/18/09.

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[For replacement pages for IAC, see IAC Supplement 3/10/10.]